The Catholic Lawyer

Volume 13
Number 3 *Volume 13, Summer 1967, Number 3*

Article 5

December 2016

How to Develop World Peace through Law

Miriam Theresa Rooney

HOW TO DEVELOP WORLD PEACE THROUGH LAW

MIRIAM THERESA ROONEY *

THE MOVEMENT FOR World Peace Through Law has opened a new dimension in juridical thought. Before World War II, the renunciation of war as an instrument of national policy was considered a great advance over previous practices. The close of that war found the idea of collective security against armed attack shared widely enough to call forth an organization of United Nations, founded specifically on that basis. The organization was therefore established in the Spring of 1945. The ink had hardly dried on the Charter when the atomic bombs were exploded on Hiroshima and Nagasaki in August, 1945. This world-shaking event disclosed that war was already outdated as an instrument of national and international policy. To those who had been taught to think of force as the implementation of law—in fact, as its *ultima ratio*—the advent of the Atomic Age detonated a juridical shock quite as shattering as the physical explosion. A thorough reconsideration of the very nature of law, especially with respect to force, was now required.

A second factor calling for a re-examination of the foundations of the legal order had arisen a few months earlier, with the trial at Nuremberg of those accused of war crimes. Here the very treaty which had been acclaimed as putting an end to war as an instrument of national policy—the Kellogg-Briand Pact of Paris—was relied upon

* A.B. (1930), A.M. (1932), Ph.D. (1937), Catholic University; LL.B. (1942), George Washington University; Professor of Law, Seton Hall University, School of Law.

as a justification for the punishment of the war criminals, as if it had been enacted as a penal statute. Then, on the unsubstantial assumption that every law incorporates a penalty for its breach, whether set forth in exact terms or not —*nulla lex sine poena*—a dramatization in the form of a juridical trial was held, resulting in adjudications on the basis of the evidence presented. The trial was premised on that theory of law, then widely accepted, which holds that force is the essential element of law—the same theory that was to be terminated so finally a few months later at Hiroshima. The anticipatory cracks at Nuremberg of the earthquake to come were more subtle in appearance perhaps, but no less devastating. They were not due quite as much to the difficulties over jurisdiction, and the *ex post facto* legislation problem, as to the defense offered on behalf of practically all the defendants—the defense of "superior orders." The lack of personal responsibility displayed for the horrendous injustices committed in pursuance of laws having the appearance of validity, and in unquestioning obedience to orders of those ostensibly having authority, has resulted in a juridical shock so deep in the foundations that nothing less than a complete reconstruction of the legal order can satisfy from now on.

The proposal to substitute law for war in the further pursuit of world peace has the great merit of raising the whole question of the nature of law de novo. If law is nothing more nor less than force, then little can be gained by substituting the word "law" for war. If, on the other hand, law appeals to reason, responsibility, and conscience, quite apart from any threat of force, the outlook is more promising. This is particularly clear on the international, if not always so on the local, level. Nations are considered as being at peace unless and until armed hostilities take place. After the military forces are called into action, it is obvious that war has taken over the place formerly held by law. The use of force is therefore striking evidence of the failure of law to prevail, not its implementation.

Undoubtedly the most impressive feature of the movement for World Peace Through Law is its timeliness. Taking shape on the basis of experience gained principally in organizing the London meeting of the American Bar Association in July, 1957, the idea, which might at another moment have appeared merely idealistic, was seen at once to be of immense practical value, especially after the successful launching of *Sputnik* three months later. The as yet inarticulate awareness of the need of a new kind of legal order, providing some scope for coexistence in outer space, in fact paralleled the beginnings of international law some three hundred years earlier, when the case for an open sea had been argued by Hugo Grotius and John Selden, with the rivalries of the Dutch and English foreign trade at stake. Then, contractual arrangements between heads of state, known as treaties, were devised by counsel to regularize incipient imperialistic aims. Now, direct communications between members of the legal profession themselves were proposed, for, as is the case with innovations generally, the lawyers are challenged to experiment no less than the scientists. With rationalization for the discoveries of the Space Age soon

to be called for, the organized bar was already at work.

If there are similarities between the beginnings of international law and World Peace Through Law, there are important differences also. In formalizing the latter, the modern technique of government-by-conference was utilized. Proposals presented as position papers were circulated throughout the world, region by region. Comments were solicited from members of the legal profession everywhere who were known to be responsible and public-spirited leaders. Then opportunities for dialogue were arranged at carefully planned intervals in convenient centers of cultural activity. In contrast with the development of international law, which was the concern primarily of crowned heads and their legal advisers, and which moved therefore from the top downwards, the movement for World Peace Through Law drew upon all members of the profession as individuals, thereby starting, in a democratic way, from the local roots, upwards. The promise of participation, now considered indispensable for successful organizations everywhere, proved to have universal appeal. Experienced lawyers in differing legal systems, who have become increasingly aware of the necessity of confronting novel conditions presented in the modern world through a cooperative sharing of information, were attracted by the regularized opportunity for a frank comparing of notes.

The novel situations in the contemporary world with which the World Peace Through Law movement is confronted are quite different from anything previously encountered. The world that existed before World War II is quite dead. There are, however, three uncompleted revolutions which were started earlier that are still going on and which the new legal order must take into account. These are: 1) political; 2) economic; and 3) human rights.

The political revolution began with the Declaration of Independence of 1776 in the American colonies. It was a revolution *for law* and against tyranny and arbitrariness. From the juridical standpoint, the new government established in 1789 by the first written constitution devised anywhere shifted the responsibility for the maintenance of the legal order to the citizens themselves. Active participation was expected, and observance of the law was based upon the formalized consent of the governed. The implications have not yet become completely explicit.

About a hundred years later it began to be manifest that political independence was little more than a paper achievement unless accompanied by economic independence. Theories, extending from the apparent abdication of government under *laissez faire* programs of business enterprise, to total involvement in the economy through ownership of the instruments of production under communism, presented serious problems for law. A middle way was devised for intervention by the government in the interest of the general welfare. The devices invented by the lawyers to meet the need for limited controls have been far-reaching, but have apparently not yet reached far enough. There are still many inequities in the distribution of the goods and services which are incorporated into

the gross national product which call for further legislative invention.

One feature of the economic revolution of especial importance for the legal order is the shift in emphasis from producers to consumers. This tends to enlarge freedom of choice and leads from the economic revolution into the revolution for the expanded protection of human rights. Although concentrating on physical needs at present, this revolution can properly be extended into the area of things of the spirit which are no less essential in order for the revolution to be truly human.

In confronting the problems presented by these contemporary revolutions, the new legal order will have to reflect the current shift from property values to persons, from reliance on force to persuasion and consent, and from coercion to conscience. If the movement for World Peace Through Law is to result eventually in better understanding of justice, its most important overall task is the reformulation of juridical objectives and their impact upon living human beings. The challenge is tremendous.

To meet this challenge, the legal profession as a whole is quite unprepared. Although World War II ended more than twenty years ago, there has been no substantial change in the law school curriculum which acknowledges its implications. Indeed, the case method of studying law, which is the basis of instruction in all the first-class American law schools, is still considered something of an innovation, notwithstanding the fact that it was first introduced almost a hundred years ago. The amazing success of the case method in training the mind analytically is sometimes balanced against its overemphasis on appellate decisions, in comparison with other essential aspects of professional practice. Even with respect to its great merit in distinguishing the relevant from the irrelevant, in ascertaining the *ratio decidendi* in a judicial opinion, sometimes the relevant itself is whittled away to a point where abstractions rather than the realities of life provide the subject under discussion. An even greater fault under present conditions is the almost exclusive concern with what the law was and is. There is little thought about what the law ought to be or could be. Indeed there is no place at all for an analysis of the relation of law to justice. The task of reformulating objectives, and their actual effect on human beings, will require a much broader-based education than the best American law schools at present offer.

Because of the backward-looking educational preparation upon which the legal profession develops its skills, there is a tendency toward restating the law instead of noting gaps that should be filled. Such surveys as have been made in the last three-quarters of a century have usually been descriptive rather than constructively critical. Recommended improvements have been primarily procedural, not substantive. It would therefore appear inadvisable at this time to bother about taking off a trial balance before opening new books of account.

Two other approaches would seem to be more promising for the movement for World Peace Through Law. The first is an interdisciplinary approach. Here some initiative could be taken in encouraging the law schools to exchange reports of

discoveries, experiments, and findings with other departments in the learned society that makes up a university. A few efforts have already been made in this direction and these should be strongly encouraged. However, before such a proposal would have a wide appeal, the inordinately influential deterrent of the backward-looking bar examinations would have to be subjected to the strong pull of the ongoing revolutions toward the future. Persuasion and public opinion can do a lot in developing any reform, in the same way that they constitute the ultimate in effecting law observance. Perhaps they can broaden the horizons of bar examiners also. The educational process is time-consuming, however, particularly when accompanied by the rather frequent turnover in personnel to be found among the members of the profession who accept responsibility for controlling admission to it. But a serious, well-reasoned exposition of the woeful inadequacies of the legal profession in confronting the Space Age should be attempted by some competent professional agency, such as the World Peace Through Law movement, in the form of a sustained campaign.

The second possible approach would be the technique of research and development, which has been so successful in the work of science, especially with military encouragement. If law is ever to replace war in achieving and maintaining peace, it would be most appropriate to start with R and D.

If it be asked what specific tasks might be suitable for research and development projects, one basic need that has received much attention from law faculty committees without far-reaching results is the matter of curriculum reconstruction. With newly formulated objectives, a considerable modification in the courses at present offered would normally be anticipated. The indispensable accompaniment of any proposed curriculum changes is the preparation of adequate teaching materials which disclose the goals suggested. When it is remembered that the shift from the lecture-treatise method to the case method was effected largely by a change in the style of the teaching materials, the possibilities for the future that are found here are exciting. In the same way that the local bar preparatory school was transformed into a national law school by the introduction of case reports from various jurisdictions on problems common to all, so the national law school now needs to be expanded into an international law school, with teaching materials combined from various legal systems covering similar juridical situations. If the economists can succeed in breaking down many of the protective trade barriers which formerly prevented a free flow of goods from where they are produced to where they are needed, then the lawyers, who have provided the economists with institutional advice, should be no less effective in breaking down the barriers that prevent exchange of juridical experiences in regulating human affairs taking place on common ground the world over. Planned research and development of teaching materials for the new international law school is among the most important needs of the present.

For some years past the physical scientists, and above all the atomic scientists, have urgently called aloud for improvements in the legal order adequate to

match the developments in the physical order. Now the social scientists, and the specialists in fields known as the humanities, have organized to induce government support. They too are conscious of a great gap in humanistic research where the law ought to be regularly represented. One of the most inexplicable situations has been the inability of the other disciplines to develop a working line of communication with representative members of the legal profession. If the World Peace Through Law movement did nothing more than restore the law to the world of the liberal arts and sciences through exchange of communications, it would accomplish something that has not been attempted for decades. The establishment of a National Humanities Foundation, with a space allotted for law, at the very moment when the law is being called upon to make a fresh start all over the world, is surely more than a coincidence. It suggests a degree of timeliness comparable to the beginnings of the World Peace Through Law movement itself in the same year that *Sputnik* made it to outer space.

Having taken into consideration: 1) the situation of the world since World War II; 2) the backward state of the legal profession and of professional preparation; and 3) a few of the immediate needs of the juridical order, some specific recommendations on how to develop World Peace Through Law can now be presented. These involve: a) the projects, and b) the machinery.

In addition to the overall task of reformulating the objectives of the juridical order, which has to be confronted on the world level as well as in local affairs, the necessity of a center of information about law in its various aspects is obvious. It is truly amazing to realize that, in a profession as long established as the law, there is no satisfactory center to which either the learned or the unlearned can turn for useful data about activities that are, in fact, of the widest possible public concern. The traditional practice of keeping the workings of the profession esoteric in an era when detailed reports of advances in the most complex situations confronted by the mathematical and physical sciences are conveyed through all kinds of communication media to the remote jungles is the strongest kind of proof that the attitude of the profession is quite out of date. The first, and perhaps most immediately practical project, is the coordination of information about all activities in progress anywhere affecting the profession of the law. Everything from the studies of the Commissioners on Uniform State Laws to those of the International Law Commission would be grist for this mill. Such a task presents formidable problems of organization, but the lawyers themselves would be the first to benefit.

A parallel task involves not only legal activities but also interdisciplinary developments of all kinds. Here it is not the detailed reports of progress which are needed so much as reference materials on the sources of information. Models which were found workable years ago are still available today. These include the Brandeis Brief, with its appeal for recognition, by judicial notice, of the verified facts of life to be found outside

legal formularies; and the "Wisconsin idea" of the senior Senator La Follette, which placed the resources of the State University at the service of the State Legislative Reference Bureau. With the development of the latter idea into a national Legislative Reference Service for Congress, empowered to utilize the resources of the Library of Congress and the research facilities of government departments, a project suitable for expansion on the world scale is already at hand.

A third area calling for development has to do with books. Almost everything one needs to know about law is in print somewhere. It has often been said that a library is as indispensable to a lawyer as a laboratory is to a scientist. Nevertheless, the services familiar in modern public libraries are rarely associated with the use of law books. Indeed comparatively few law libraries are regularly open to the public as a matter of right, as distinguished from privilege. This astonishing feature of the modern age of communications may soon be outdated by the prospect that printed books as a whole are shortly to be supplanted by other types of communications media. Until the promised day arrives, perhaps nothing could be more helpful for legal research than reading into a computer the items of the Union Catalogue of the Library of Congress and supplementing this with items from all the catalogues of the great law libraries of the world. The lawyers of the new countries who are engaged in creative legislative drafting of a most formidable kind, in areas where adequate national library resources are still waiting to be built, would be likely to find a computerized world catalogue of available legal literature as invaluable an aid to economic and social development as the United Nations organization itself.

A supplementary service by the computer would involve biographical data of every person admitted to the bar, with a brief record of his specialties or special qualifications. If this were kept as up to date as possible, with particular attention paid to judicial and other public officers, the human resources of the profession would also be made more readily available.

Perhaps the greatest gap in the entire legal system is the lack of any responsible official whose primary duty is to care about justice. Yet justice is what the people invariably expect. There have been suggestions about the need for a ministry of justice to keep a specific legal system under continual survey and to make recommendations to the legislature concerned for desirable improvements. There have been proposals for the authorization of an officer with the exclusive duty of hearing and investigating complaints about the administration of justice, or lack of it, who would also be charged with the duty of suggesting improvements. And there have always been responsible individuals in the profession who devote time and thought, often through bar association committees, to needed reforms. Nevertheless, many of "the causes for the dissatisfaction with the administration of justice," which made a deep impression on the organized bar as outlined by Roscoe Pound about sixty years ago, remain. They are not only pro-

cedural, but also substantive. Somewhere, between attorneys general, solicitors general, prosecutors, administrative directors of the courts, chief justices, municipal and county attorneys, chairmen of law revision committees, district attorneys, chairmen of grievance committees, chairmen of congressional committees, and other officers commissioned with a public trust, there is no one person with general jurisdiction whose duty it is to serve as liaison between the people and their law.

It is therefore a principal recommendation of this essay that a new office of Counsellor General be established, whose task would be: 1) to hear the suggestions, recommendations, questions, and grievances of the people about the functioning of their legal system; 2) to explain himself, or to refer to those more directly concerned with appropriate follow-up procedures, the problems involved; 3) to coordinate the suggestions received; 4) to undertake investigations and research on his own initiative, directed toward recommendations for improvement; 5) to encourage research by grants awarded through his own office or by independent foundations; 6) to maintain close contact with the Law Section of the new National Humanities Foundation; 7) to suggest areas of law school study calling for concentrated faculty attention. A Counsellor General would be desirable in each country, assisted by deputies to meet regional needs. The Chairman of the Counsellors General should have his headquarters at the World Peace Through Law Center, and coordinate the world-wide correspondence which the existence of the Center tends to elicit. His authority, outside of the management of his own office, would be limited to persuasion and recommendations, after consultation on important matters with his colleagues. He would not be accorded power to intervene directly or indirectly in the jurisdiction established for other responsible officers. Contacts with the press and communications media would be of primary importance. The entire basis of his activities would be *service*—service to the people and service to the profession in their behalf. Needless to say, he should be a person of the highest professional attainments and of such stature and integrity as to inspire confidence. Above all else, he must make it known everywhere that he represents a profession which *cares*.

The World Peace Through Law movement signifies the appearance of a new dimension in law. Its existence is due to a deeply felt need. Its field of operations is an entirely new world, confronted by situations which human beings have never before faced. To fill the tremendous gap opened up by the atomic earthquake, heroic measures must be taken. To borrow a familiar analogy, tranquillizers designed to alleviate symptoms no longer suffice. The probing must reach the depths if a cure is to be found for the wasting malnutrition which could prove fatal. For the lawyers, the figure implies: 1) a complete rethinking of objectives and their impact on human beings; 2) a reconstruction of the whole law school curriculum so that it will face forward; 3) the establishment of a new center of information about law, open to active participation by the people, in

whose ultimate interest the improvement of the legal order is undertaken.

Borrowing from the economists the guideline of the rational use of natural resources, and recognizing that the natural resources of the law are essentially human, the immediate problem is to break down the barriers that have kept segments of the legal order in isolation for centuries. The next task is to recognize and make applicable in law the shift in orientation that is taking place the world over toward participation, responsibility, and conscience in expanding the area of freedom under law. A third change that is desired in shifting the outlook from the past to the future is the substitution of preventive for punitive law. Penalties, punishments, and coercive measures, which are threatened or applied after a deed is done, are less inducive to responsible conduct than laws that exist beforehand and prevent troubles from arising. The view of law as the equivalent of force led to many mistakes; its errors have now become so glaring that they no longer need to be specifically pointed out. The corrective which is called for is a replacement of force by justice. For law to be an effective substitute for war in the achievement of world peace, it will have to be more widely recognized that peace is the work of justice. Only to the extent that law implements justice will it be possible for the movement for World Peace Through Law to achieve the high purpose of its foundation. It is possible that the search and research required to disclose the institutions needed to make clearer the actual relations of law to justice on the world scale will also provide insight into correctives necessary on the local level, and that through the efforts to bring about World Peace Through Law it will become more generally recognized that the peace of the world is based upon right—*pax orbis ex jure.*